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PERFORMANCE CONTRACTING, INC.

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA for the use and
benefit of WEBCOR CONSTRUCTION, INC.
14 dba WEBCOR BUILDERS, and WEBCOR
CONSTRUCTION, INC. dba WEBCOR
BUILDERS,

15 Plaintiffs,

16 vs.

17 DICK/MORGANTI, a joint venture; DICK
18 CORPORATION; THE MORGANTI GROUP;
19 AMERICAN CASUALTY COMPANY OF
20 READING, PENNSYLVANIA; NATIONAL
UNION FIRE INSURANCE COMPANY OF
21 PITTSBURGH, PA; and DOES 1-10, inclusive,

22 Defendants.

23 AMERICAN CASUALTY COMPANY OF
24 READING, PA; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PA,

25 Third-Party Plaintiffs,
26
27

Case No. 3:07-CV-02564-CRB

**PERFORMANCE CONTRACTING,
INC.'S STATUS UPDATE ON
DICK/MORGANTI'S FAILURE TO
FILE A PROPER AND COMPLETE
CLAIM**

DATE: December 19, 2007
TIME: 3:00 p.m.
JUDGE: Hon. Charles R. Breyer
(Courtroom 8)

1 vs.

2 BOYETT CONSTRUCTION, INC., a California
3 corporation; MARELICH MECHANICAL CO.,
4 INC., a California corporation; PERFORMANCE
5 CONTRACTING GROUP, INC. dba
6 PERFORMANCE CONTRACTING, INC., a
7 Delaware corporation; PERMASTEELISA
8 GROUP USA HOLDINGS CORP., a Delaware
9 corporation fdba PERMASTEELIS CLADDING
10 TECHNOLOGIES L.P., a Delaware limited
11 partnership, fdba PERMASTEELISA
12 CLADDING TECHNOLOGIES, LTD.;
13 ROSENDIN ELECTRIC, INC., a California
14 corporation; THIRD PARTY DOE
15 DEFENDANTS 1 THROUGH 20.

16 Third Party Defendants.

1 **I. STATEMENT OF FACTS**

2 On October 19, 2007, a status conference and hearing was held on the motion to stay
3 filed by Dick/Morganti (“D/M”) and its sureties. A copy of the transcript of that hearing is
4 attached the Declaration of Steven L. Iriki (“Iriki Declaration”) filed herewith as Exhibit A. The
5 Court conditionally granted D/M’s motion to stay and directed D/M to file and serve its global
6 claim by November 30, 2007. The Court then set a further status conference for December 19,
7 2007, to discuss D/M’s global claim, to determine which portions of the subcontractor’s claims
8 were not included in the global claim, and to consider whether those portions of the
9 subcontractor’s claims that were excluded from the global claim should be tried by the Court.

10 On December 10, 2007, Performance Contracting, Inc. (“PCI”) received a copy of D/M’s
11 supposed global claim supported by various exhibits. A copy of the global claim without the
12 various exhibits is attached to the Iriki Declaration as Exhibit B; a list of the exhibits filed with
13 the claim can be found at pages 111-116 of the narrative portion of the claim.

14 **II. DISCUSSION**

15 At the October 19 status conference, the Court made it quite clear to D/M that it must file
16 and serve its claim by the end of November. If the claim wasn’t filed by November 30, then the
17 stay would be automatically lifted unless D/M filed an application for an extension of the stay
18 supported by good cause. See Iriki Declaration, Exhibit A at 21:19-23:7.

19 While, at first glance, it might appear that D/M has complied with the Court’s directive, it
20 has not. What is most shocking about D/M’s global claim is that it contains **no damage**
21 **allegations whatsoever**. Nowhere in its claim, has D/M specified what its damages are (let alone
22 its subcontractors’ damages). At page 109 of its claim (Iriki Declaration, Exhibit B), D/M states
23 that it’s still working on calculating its damages and that it will be provided to the GSA at some
24 unspecified time in the future. To say that D/M’s claim is flawed and incomplete is an
25 understatement. The Court directed D/M to file its complete claim by November 30 so that the
26
27

1 claims would move forward with the GSA and contracting officer. Without any damage
2 calculations or demands, the GSA and contracting officer are not going to make a decision on
3 D/M's claims, and the subcontractors' claims will remain outstanding.

4 Not only does D/M's supposed claim fail to include any damages, it contains little, if any,
5 reference to the subcontractors' claims. As stated at pages 105-106 of its claim (Iriki Declaration,
6 Exhibit B), with the exception of Webcor, D/M has not passed on any of the subcontractors claims
7 to the GSA and the contracting officer.¹ D/M merely states that at least nine (9) subcontractors
8 have claims on the project and that those claims will be submitted at sometime in the future.
9 Other than this cursory and vague reference to the subcontractors' claims, there is no other
10 mention of the subcontractors' claims. From the last status conference it was clear that D/M was
11 required to include at least some description of the subcontractor's claims and damages in its
12 global claim so that a determination could be made as to which remaining claims/items should be
13 tried by this Court. Since no description of the subcontractors' claims has been included, such an
14 analysis is impossible.

15 D/M's global claim is woefully incomplete and borders upon being a farce. This Court
16 gave D/M a fair chance to file its complete global claim and D/M has chosen to ignore the Court's
17 instructions. Since D/M's claim is flawed and incomplete and given that D/M did not make an
18 application to have the stay extended, the Court should immediately lift the stay and allow the
19 subcontractors to go forward with their claims against D/M and the sureties.

20 Dated: December 11, 2007

OTIS CANLI & IRIKI, LLP

21 By: 
22 

Steven Iriki

23 Attorneys for Plaintiff and Third-Party Defendant
24 PERFORMANCE CONTRACTING, INC.

25 ¹ This despite the fact that PCI submitted its claim for approximately \$7.6 million to D/M almost
26 six months ago on June 29, 2007. Iriki Declaration at par. 2.

PROOF OF SERVICECASE NAME: *Webcor Construction, Inc., et al. v. Dick/Morganti, et al.*COURT INFORMATION: United States District Court, Northern District of California, San Francisco
Division Case No. 3:07-CV-02564-CRB

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of 18 years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is 625 Market Street, 4th Floor, San Francisco, California 94105-3306. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date listed below, following ordinary business practice, I served the following document(s):

- **PERFORMANCE CONTRACTING, INC.'S STATUS UPDATE ON DICK/MORGANTI'S FAILURE TO FILE A PROPER AND COMPLETE CLAIM**
- **DECLARATION OF STEVEN L. IRIKI**

on the party(ies) in this action, through his/her/their attorneys of record, by placing true and correct copies thereof in sealed envelope(s), addressed as shown on the attached Service List for service as designated below:

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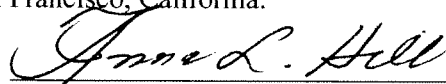
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(XX) BY ELECTRONIC FILING/SERVICE: I caused such document(s) to be Electronically Filed and Served through the PACER system for the above-entitled case. Electronic service has been accomplished by the service maintained by PACER.

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2 (X) (Federal) I certify/declare under penalty of perjury under the laws of the State of California and
3 of the United States that the foregoing is true and correct, and that I am employed in the
4 office of a member of the bar of this Court at whose direction the service was made.
5 Executed on December 12, 2007, at San Francisco, California.



Anna L. Hill